IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR

FRIDAY, THE 10TH NOVEMBER 2006 / 19TH KARTHIKA 1928

WP(C).No. 10081 of 2005(A)

{O.S.NO.1018/1994 OF THE PRINCIPAL SUB COURT, TRIVANDRUM}

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PETITIONERS:

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1. P.M. KHALID, S/O. PEERUMUHAMMED HAJI, T.C.10/228, CHITHRA NAGAR, ANCHAMADA MURI, VATTIYOORKAVU, THIRUVANANTHAPURAM.

2. MURUKESAN, S/O. CHEENIYAPPA NADAR, CHERIYA NADAR THERUVU, CHANNAN CHETTIVILA, AGASTHEESWARAM TALUK, NAGARCOIL.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:

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1. SOMAN, S/O. KESAVAN, T.C.19/1500, MADATHINKAL VEEDU, THAMALAM-MUDAVANMUGAL WARD, TIRUMALA, THIRUVANANTHAPURAM.

2. AYYAPPAN, S/O. KESAVAN, DO. DO.

3. BABU, DO.

4. SASIDHARAN, DO.

ADDL.R5. MADHAVAN PILLAI,
S/O.SADASIVAN PILLAI,
T.C.36/198,
KUNJUVEETU VILAKOM,
CHALAI,
THIRUVANANTHAPURAM.

ADDITIONAL R5 IS IMPLEADED AS PER ORDER DATED 2.3.06 IN I.A.1103/06

R1 TO R3 BY ADV. SRI.G.S.REGHUNATH
ADDL.R5 BY ADV. SRI.D.SAJEEV
SMT.S.B.JAYARESMI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: TRUE COPY OF THE AFFIDAVIT FILED IN SUPPORT OF I.A.2651/02 DATED 16.08.2002.

EXT.P2: TRUE COPY OF THE OBJECTION FILED BY THE FIRST DEFENDANT TO Ext.P1 APPLICATION DATED 25.09.2002.

EXT.P3: TRUE COPY OF THE OBJECTION FILED BY THE 2ND DEFENDANT DATED 07.10.2002.

EXT.P4: TRUE COPY OF THE ORDER OF THE COURT OF THE PRINCIPAL SUB JUDGE, TRIVANDRUM IN I.A.2651/02 IN O.S.1018/94 DATED 18.02.2005.

RESPONDENTS' EXHIBITS: NIL

//true copy//

P.S. To Judge

"C.R."

K.A.ABDUL GAFOOR, J.

W.P.(C)No.10081 of 2005

Dated this the 10th day of November, 2006.

JUDGMENT

The plaintiff in a suit for recovery of possession on the basis of title sought for amendment of the pleading incorporating certain additional reliefs including one to declare that a decree in a suit was not binding on him or his predecessors in interest. Other attendant reliefs were also sought to be incorporated with necessary averments. It was dismissed as per Ext.P4. Therefore, this writ petition.

2. It is contended that the court below had dismissed the application for amendment on the ground of limitation. At the stage of amendment, limitation was not a matter arising for consideration. That was a matter for consideration in a suit at the final stage. Therefore, the court below went

wrong in that regard. Much reliance is placed, to fortify this contention, based on the Supreme Court decision in ***Ragu Thilak D.John v. S.Rayappan and others {[2001] 2 S.C.C. 472}.*** Therefore, according to the petitioner Ext.P4 shall have to be set aside and Ext.P1 application for amendment shall have to be allowed.

3. This contention is resisted contending that defendants 1 and 2 had filed separate written statements setting up their title as against the petitioner on the basis of a court sale in O.S.No.79/1104 of the District Court, Thiruvananthapuram. The suit was filed in the year 1994 and the written statements were filed immediately thereafter on 17.10.1995 by the first defendant and on 20.10.1996 by the second defendant claiming the title to the property based on the said decree. The amendment petition Ext.P1 was filed only on 16.8.2002, more than 6 years

later than the filing of the said written statements. Necessarily, it is barred by the limitation provided for in article 59 of Part IV of the Schedule to the Limitation Act, 1963. Therefore, the court below was justified in dismissing the application for amendment of the plaint.

4. Heard the parties. The decision in ***Ragu Thilak D.John's*** case relied on by the petitioner does not have much application in this case, as that was a case where the Supreme Court felt:

> "***In the circumstances of the case the plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for.***"

Therefore, the said decision is not an authority to contend that while considering an amendment petition incorporating a new relief, the trial court cannot consider the

contention regarding the limitation of the reliefs newly so introduced.

5. It is an essential aspect to be insisted to state the case regarding the cause of action that had arisen necessitating a suit. The suit was admittedly for recovery of possession on the basis of the title. The cause of action had been stated in the plaint. The important among the new reliefs sought for in Ext.P1 application for amendment was in the following lines:

> ***"Declaring that the decree and judgment and other proceedings in consequences of judgment in O.S.No.79/1104 by the District Court, Thiruvananthapuram is not binding on the plaintiffs and their predecessors and also not binding on the 'A' schedule property."***

6. This being a new relief unrelated to the reliefs already claimed, necessarily, the cause of action forming basis for the amendment sought for, had to be stated. Thorough scanning of Ext.P1 petition does not

reveal the cause of action for this substantial relief sought to be introduced by way of amendment. Without citing a cause of action, one cannot seek a relief. On that sole ground itself, the amendment ought to have been rejected at the threshold.

7. This is discernible from Clause (a) of Rule 11 of Order VII Code of Civil Procedure, 1908 which enables the court to reject a plaint. It enables a court to reject a plaint:

"Where it does not disclose a cause of action"

That power will be available when an amendment seeking a different substantial prayer on the basis of a different cause of action to that mentioned in the plaint at the original stage, is pursued.

8. The contention of the appellant that the limitation cannot be pleaded at the threshold and that it is one to be considered

at the final stage also does not hold good in the light of the Clause (d) in Rule 11 of Order 7 Code of Civil Procedure. Even if a plaint is presented to the court alleging a cause of action, the said rule enables that court to reject the plaint at the threshold if "the suit appears from the statement in the plaint to be barred by any law".

9. As already mentioned above, written statements have been filed by defendants 1 and 2 setting up their title to the property on the basis of the sale in O.S.No.79/1104 of the District Court, Thiruvananthapuram on 17.10.1995 and 20.10.1996. Ext.P1 application is dated 16.8.2002. As provided in Article 59 in Part 4 of the Schedule to the Limitation Act, a suit to set aside a decree or rescission of a contract, the limitation period provided for is 3 years. Consequently, going by the details revealed on record, the suit appears

to be barred by the said Article in the Limitation Act.

In such circumstances, the order of the court below, Ext.P4, cannot be stated to be unjustified to invite interference in this writ petition filed under Article 227 of the Constitution of India. Writ petition, therefore, stands dismissed. It is made clear that any observation or finding contained in this judgment shall not affect the suit as originally framed.

(K.A.ABDUL GAFOOR)
JUDGE

sk/

K.A.ABDUL GAFOOR , J.

W.P.(C)No.10081 of 2005

JUDGMENT

10th November, 2006.